IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 28TH FEBRUARY 2007 / 9TH PHALGUNA 1928

WP(C).No. 19420 of 2003(J)

PETITIONER:

M.O.MARY, PHYSICAL EDUCATION TEACHER,
S.K.H.S. MATTATHUR.

BY ADV. SRI.MVS.NAMBOOTHIRY

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVERNMENT, DEPARTMENT OF GENERAL EDUCATION, SECRETARIAT, TRIVANDRUM.

2. THE ACCOUNTANT GENERAL (A&E), KERALA & LAKSHADWEEP, ACCOUNTANT GENERAL'S OFFICE, TRIVANDRUM.

3. THE DY.DIRECTOR OF EDUCATION, THRISSUR.

4. THE DISTRICT EDUCATIONAL OFFICER, IRINJALAKKUDA.

BY GOVERNMENT PLEADER SRI.SANDESH RAJA FOR R1 TO R4

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO.19420/2003

ORDER IN I.A.NO. 5720 OF 2003 IN WP(C) NO.19420 OF 2003

DISMISSED

28/02/2007 **SD/-**
ANTONY DOMINIC, JUDGE

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: TRUE COPY OF G.O(P) NO.615/97(138)/FIN. DT.28.6.1997.

EXT.P2: TRUE COPY OF G.O(P) NO.352/96(86) FIN DATED 11.4.96.

EXT.P3: TRUE COPY OF G.O(P) NO.38/98(152) FIN DT.5.1.98.

EXT.P4: TRUE COPY OF G.O NO.399(178)/99 FIN DT.5.2.99.

EXT.P5: TRUE COPY OF G.O(MS) NO.1333/99 FIN DT.30.4.99.

EXT.P6: TRUE COPY OF G.O(P) NO.1503 (180)/99/FIN DT.22.6.99.

EXT.P7: TRUE COPY OF THE RE-OPTIONSUBMITTED BY THE PETITIONER ON 1.1.1996.

EXT.P8: TRUE COPY OF THE CHALAN DT.15.5.96.

EXT.P9: TRUE COPY OF THE PAY FIXATION STATEMENT DT.1.1.96.

EXT.P10: TRUE COPY OF THE OBJECTION DTD.9.10.02.

EXT.P11: TRUE COPY OF THE LETTER DT.12.5.2003.

EXT.P12: TRUE COPY OF THE JUDGMENT IN OP 20280 OF 2001 DT.11.3.02.

EXT.P13: TRUE COPY OF THE JUDGMENT IN WA 2293 OF 2002 DT.25.9.02.

EXT.P14: TRUE COPY OF THE JUDGMENT IN OP 870 OF 2003 DTD. 10.1.03.

//TRUE COPY//

ANTONY DOMINIC, J.

W.P(C) NO. 19420 OF 2003

Dated this the 28th day of February, 2007

J U D G M E N T

The petitioner, a Physical Education Teacher, has filed this writ petition seeking a declaration that Ext.P7 re-option submitted by her is valid and to have Exhibits P10 and P11 quashed. Following the 1992 Pay Revision implemented by GO(P) No.600/93/Fin dated 25th of September 1993 w.e.f. 1/3/92, various Government orders were issued and the controversy in this writ petition is regarding the interpretation of GO(P) 952/95(63)/Fin dated 5/12/95. According to the petitioner, she was entitled for the re-option as contemplated in the said Government order.

2. Based on GO(P) 952/95(63)/Fin petitioner exercised the re-option by Exhibit P7 dated 1/1/96, which was accepted and as required of her, the excess pay drawn was also refunded by the petitioner. It is stated that after extending the benefits consequent on the re-option thus validly exercised, following an audit objection, this was withdrawn by Exhibit P10 and that led her to file this writ petition, seeking the reliefs mentioned above. It is also stated that in the meanwhile, on attaining the age of

superannuation, the petitioner retired from the service, w.e.f. 30/6/03.

3. Answering to the claim in the writ petition, Government Pleader would argue that GO(P) No.952/95 is not applicable to teachers. According to him, its application is confined only to Government employees, who alone are mentioned in Para 2 thereof.

4. Having heard the arguments on either side, I am not in a position to accept the contention of the learned Government Pleader. It is seen that almost an identical issue was considered by a learned Single Judge of this Court in OP No.20280/01 and Ext.P12 is the judgment rendered in that case. In that case, the interpretation of the GO(P) 399(178)/99/Fin dated 5/2/99 came up for consideration and that Government order also dealt with the case of re-option to be exercised by the Government employees. Reference to the Government order would disclose that this was issued only to extend the period specified for re-option as per GO (P) 615(138)/97 dated 28th June 1997. The controversy which was resolved in the above case arose out of the re-option exercised by teachers following GO(P) No.399/(178)/99 dated 5/2/99. Understanding the scope of GO(P) No.399/99 dated 5/2/99, in the

original petition filed by teachers, it was held that the scope of GO (P) No.399/99, Exhibit P4 therein, took within its fold the teachers as well. This conclusion of learned Single Judge was affirmed by a Division Bench of this Court in WA No.2293/02, by Ext.P13 judgment. Thus the very same expression occurring in the aforesaid Government order was interpreted and understood as covering teachers as well. If the same logic is applied, the contention of the learned Government Pleader that the expression Government employees mentioned in GO(P) No.952/95 excludes teachers has to be rejected and I do so. In the aforesaid view of the matter, the re-option exercised by the petitioner by Ext.P7 has to be held as valid and the audit query raised by Ext.P10 and the withdrawal of benefits by Ext.P11 have to be declared as invalid and I do so.

5. Accordingly, Exhibits P10 and P11 will stand quashed and the petitioner is declared to be entitled for all benefits arising out of re-option exercised by her and evidenced by Ext.P7.

Writ petition is disposed of as above. No costs.

ANTONY DOMINIC, JUDGE

Rp